

SECOND REGULAR SESSION

SENATE BILL NO. 1234

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATORS MATHEWSON AND CHILDERS.

Read 1st time February 5, 2004, and ordered printed.

TERRY L. SPIELER, Secretary.

4484S.01I

AN ACT

To repeal sections 100.255, 100.260, 100.270, 100.275, 100.281, 135.545, and 620.1039, RSMo, and to enact in lieu thereof fourteen new sections relating to job creation.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 100.255, 100.260, 100.270, 100.275, 100.281, 135.545, and 620.1039, RSMo, are repealed and fourteen new sections enacted in lieu thereof, to be known as sections 100.255, 100.260, 100.270, 100.275, 100.281, 100.293, 135.155, 135.286, 135.1050, 135.1055, 135.1060, 135.1065, 135.1070, and 135.1075, to read as follows:

100.255. As used in sections 100.250 to 100.297, the following terms mean:

- (1) "Board", the Missouri development finance board created by section 100.265;
- (2) "Borrower", any person, partnership, public or private corporation, association, development agency or any other entity eligible for funding under sections 100.250 to 100.297;
- (3) "Development agency", any of the following:
 - (a) A port authority established pursuant to chapter 68, RSMo;
 - (b) The bi-state development agencies established pursuant to sections 70.370 to 70.440, RSMo, and sections 238.010 to 238.100, RSMo;
 - (c) A land clearance for redevelopment authority established pursuant to sections 99.300 to 99.660, RSMo;
 - (d) A county, city, incorporated town or village or other political subdivision or public body of this state;
 - (e) A planned industrial expansion authority established pursuant to sections 100.300 to 100.620;
 - (f) An industrial development corporation established pursuant to sections 349.010 to 349.105, RSMo;

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

(g) A real property tax increment financing commission established pursuant to sections 99.800 to 99.865, RSMo;

(h) Any other governmental, quasi-governmental or quasi-public corporation or entity created by state law or by resolution adopted by the governing body of a development agency otherwise described in paragraphs (a) through (g) of this subdivision;

(4) "Development and reserve fund", the industrial development and reserve fund established pursuant to section 100.260;

(5) "Export finance fund", the Missouri export finance fund established pursuant to section 100.260;

(6) "Export trade activities" includes, but is not limited to, consulting, international market research, advertising, marketing, insurance, product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communication, and processing of foreign orders to and for exporters and foreign purchases and warehousing, when undertaken to export or facilitate the export of goods or services produced or assembled in this state;

(7) "Guarantee fund", the industrial development guarantee fund established by section 100.260;

(8) "Infrastructure development fund", the infrastructure development fund established under section 100.263;

(9) "Infrastructure facilities", the highways, streets, bridges, water supply and distribution systems, mass transportation facilities and equipment, telecommunication facilities, jails and prisons, sewers and sewage treatment facilities, wastewater treatment facilities, airports, railroads, reservoirs, dams and waterways in this state, acquisition of blighted real estate and the improvements thereon, demolition of existing structures and preparation of sites in anticipation of development, public facilities, and any other improvements provided by any form of government or development agency;

(10) **"Jobs now fund", the jobs now fund established under section 100.260;**

(11) "Jobs now projects", the purchase, construction, extension, and improvement of real estate, plants, buildings, structures, or facilities, whether or not now in existence, used or to be used primarily as infrastructure facilities, public facilities, or public higher education infrastructure facilities;

(12) "Participating lender", a lender authorized by the board to participate with the board in the making of a loan or to make loans the repayment of which is secured by the development and reserve fund;

[(11)] (13) "Project", the purchase, construction, extension, and improvement of real estate, plants, buildings, structures or facilities, whether or not now in existence, used or to be used primarily as a factory, assembly plant, manufacturing plant, fabricating plant, distribution center, warehouse building, office building, port terminal or facility,

transportation and transfer facility, industrial plant, processing plant, commercial or agricultural facility, nursing or retirement facility or combination thereof, recreational facility, cultural facility, public facilities, job training or other vocational training facility, infrastructure facility, video-audio telecommunication conferencing facility, office building, facility for the prevention, reduction, disposal or control of pollution, sewage or solid waste, facility for conducting export trade activities, or research and development building in connection with any of the facilities defined as a project in this subdivision. The term "project" shall also include any improvements, including, but not limited to, road or rail construction, alteration or relocation, and construction of facilities to provide utility service for any of the facilities defined as a project under this subdivision, along with any fixtures, equipment, and machinery, and any demolition and relocation expenses used in connection with any such projects and any capital used to promote and facilitate such facilities and notes payable from anticipated revenue issued by any development agency;

[(12)] **(14)** "Public facility", any facility or improvements available for use by the general public including facilities for which user or other fees are charged on a nondiscriminatory basis;

(15) "Public higher education infrastructure facilities", wet labs, research facilities, eligible research equipment of a four-year public college or university of the state of Missouri.

100.260. 1. There are hereby created [three] **four** special funds, to be known as the "Industrial Development and Reserve Fund" [and], the "Industrial Development Guarantee Fund", [and] the "Export Finance Fund", **and the "Jobs Now Fund"**, into which the following may be deposited as and when received and designated for deposit in one of such funds:

(1) Any moneys appropriated by the general assembly for use by the board in carrying out the powers set forth in sections 100.250 to 100.297;

(2) Any moneys made available through the issuance of revenue bonds under the provisions of sections 100.250 to 100.295;

(3) Any moneys received from grants or which are given, donated, or contributed to the fund from any source;

(4) Any moneys received in repayment of loans or from application fees, reserve participation fees, guarantee fees and premium payments as provided for under sections 100.250 to 100.297;

(5) Any moneys received as interest on deposits or as income on approved investments of the fund;

(6) Any moneys obtained from the issuance of revenue bonds or notes by the board;

(7) Any moneys that were in the industrial development fund authorized by this section, the economic development reserve authorized by section 620.215, RSMo, or the

industrial revenue bond guarantee fund authorized by section 620.240, RSMo, respectively, as of September 28, 1985; and

(8) Any moneys obtained from any other available source.

2. The development and reserve fund, the guarantee fund, **the jobs now fund**, and the export finance fund shall be administered by the board as provided in sections 100.250 to 100.297. Separate accounts may be created within the development and reserve fund and the guarantee fund for moneys specifically appropriated, donated or otherwise received for industrial development purposes. The board may also create such other separate accounts within **any of** such funds as deemed necessary or appropriate by the board to carry out the duties and purposes of sections 100.250 to 100.297. All such separate accounts may be administered by a corporate trustee on behalf of the board upon the terms and conditions established by the board.

3. Moneys in the **jobs now fund**, the development and reserve fund, the guarantee fund, and the export finance fund shall be invested by the board in the manner prescribed by the board and any interest earned on invested moneys shall accrue to the benefit of the respective fund.

4. **None of the funds and accounts of the board shall be considered a state fund, and money deposited therein may not be appropriated therefrom, nor shall any money deposited therein be subject to** the provisions of section 33.080, RSMo[, to the contrary notwithstanding, the development and reserve fund, the guarantee fund and the export finance fund, including any moneys in any of such funds appropriated by the general assembly, shall not lapse at the end of the biennium and the balance shall not be transferred to the general revenue fund].

100.270. The board shall have the power to:

(1) Sue and be sued in its official name;

(2) Adopt and use an official seal;

(3) Confer with agencies of the state and development agencies, and with representatives of business, industry, and labor for the purpose of promoting the economic development of this state;

(4) Consider and review applications for loans to be made from the development and reserve fund or for loans, bonds or notes to be made by or secured by the development and reserve fund, the guarantee fund, the export finance fund or the infrastructure development fund or any other available money, under sections 100.250 to 100.297, **and for grants, loans, bonds, or notes to be made by or secured by the jobs now fund**;

(5) Enter into agreements with development agencies, borrowers, participating lenders and others to implement any of the provisions of sections 100.250 to 100.297;

(6) Direct disbursements from the development and reserve fund, the guarantee fund, the export finance fund, [and] the infrastructure development fund, **and the jobs now fund**

as provided in sections 100.250 to 100.297;

(7) Administer the development and reserve fund, the guarantee fund, the export finance fund, [and] the infrastructure development fund, **and the jobs now fund** and invest any portion of such funds not required for immediate disbursement in obligations of the United States, or any agency or instrumentality of the United States, in obligations of the state of Missouri and its political subdivisions, in certificates of deposit and time deposits or other obligations of banks and savings and loan associations or in such other obligations as may be prescribed by the board;

(8) Apply for and accept gifts, grants, appropriations, loans or contributions to the development and reserve fund, the guarantee fund, the export finance fund, [and] the infrastructure development fund, **and the jobs now fund** from any source, public or private, and enter into contracts or other transactions with any federal or state agency, any development agency, private organization, or any other source in furtherance of the purposes of sections 100.250 to 100.297, and do any and all things necessary in order to avail itself of such aid and cooperation;

(9) Issue, from time to time, its negotiable revenue bonds or notes in such principal amounts as, in its opinion, shall be necessary to provide sufficient funds for achieving its purposes;

(10) Establish reserves to secure bonds, notes and loans issued or made by the board, development agencies or participating lenders;

(11) Make, purchase, or participate in the making or purchase, of loans, bonds, or notes to finance the costs of projects;

(12) Procure insurance, letters of credit, or other form of credit enhancement, to secure the payment of principal and interest on any loans, bonds or notes or other obligations of the board;

(13) Purchase, receive, take by grant, gift, devise, bequest or otherwise, lease, or otherwise acquire, own, hold, improve, employ, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated;

(14) Sell, convey, lease, exchange, transfer or otherwise dispose of, all or any of its property, or any interest therein, wherever situated;

(15) Conduct hearings and other methods of examination, and authorize any of its members to do so, on any matter material for its information and necessary to the exercise of the duties of the board;

(16) Employ and fix the compensation of an executive director and such other agents or employees as it considers necessary;

(17) Adopt, alter, or repeal its own bylaws, rules, and regulations governing the manner in which its business may be transacted;

(18) Assess or charge a fee for each application it receives for funding for a project

or a jobs now project and assess or charge other fees as the board determines to be reasonable to carry out its purposes, including, but not limited to, fees or premiums for loans made from the development and reserve fund and the export finance fund and for loans, bonds or notes secured by the development and reserve fund, the guarantee fund, the export finance fund or the infrastructure development fund **or the jobs now fund**;

(19) Make all expenditures which are incident and necessary to carry out its purposes and powers;

(20) Take such action, enter into such agreements and exercise all other powers and functions necessary or appropriate to carry out the duties and purposes set forth in sections 100.250 to 100.297;

(21) Insure, coinsure, guarantee loans and make loans relating to qualified export transactions and adopt criteria, by means of rules and regulations, establishing which exporters shall be eligible for the insurance, coinsurance, loan guarantees and loans which may be extended by the board;

(22) Do all things necessary to ensure full participation by the state of Missouri in any federal program which may relate to the construction, repair, replacement or further development of the infrastructure of the state and its political subdivisions;

(23) Receive funds from the federal government for deposit into the infrastructure development fund **or the jobs now fund** and authorize disbursements therefrom [in accordance with appropriations]. The board may enter into agreements with agencies of the federal government and may, on behalf of the state of Missouri, do all things necessary to ensure full participation by the state of Missouri in any federal program which may relate to the repair, replacement or further development of the infrastructure of the state and its political subdivisions;

(24) Set guidelines and priorities for loans, loan guarantees or grants from the infrastructure development fund. The board is the sole state agency authorized to set such guidelines and priorities with respect to the infrastructure development fund on behalf of the state or any of its political subdivisions, and loans, loan guarantees, or grants shall only be made upon approval of the board;

(25) Make equity investments in or otherwise acquire ownership interests in: for-profit and not-for-profit federal- or state-authorized community development corporations; small business investment companies, including minority or specialized small business investment companies; and microloan corporations and similar lending institutions, when such investments are deemed to enhance the benefit of the public; [and]

(26) Make investments in Missouri certified capital companies, as defined by subdivision (7) of subsection 2 of section 135.500, RSMo, or other investment companies for investment in qualified Missouri businesses, as defined by subdivision (14) of subsection 2 of section 135.500, RSMo. All investments made by the board for the eventual investment

in qualified Missouri businesses shall be matched by an equivalent investment made by the certified capital company or other investment firm for investment into qualified Missouri businesses. All investments made into Missouri qualified businesses under the provisions of this subdivision shall be in the form of equity or unsecured debt financing. No investment shall be made by the board under the provisions of this subdivision without the approval of the director of the department of economic development; **and**

(27) Make loans and grants from the jobs now fund in accordance with the provisions of section 100.293.

100.275. 1. The board may at any time issue revenue bonds for the purpose of paying any part of the cost of any project or projects, or part thereof, **for the purpose of initially providing money for the jobs now fund**, and for the purpose of refunding any of its bonds or the bonds of any development agency. Every issue of its bonds shall be payable out of the revenues of the board which may be pledged for such payment, **and in the case of the bonds issued to initially provide money for the jobs now fund, shall be payable from funds appropriated by the general assembly for said purpose**, without preference or priority of the first bonds issued, subject to any agreement with the holders of any other bonds or pledging any specified revenues. The bonds shall be authorized by resolution of the board, shall bear such date or dates, and shall mature at such time or times, but not in excess of thirty years, as the resolution of the board shall specify. The bonds shall be in such denominations, bear interest at such rates, be in such form, either coupon or registered, be issued in such manner, be payable in such place or places and be subject to redemption as such resolution may provide. The bonds of the board may be sold at public or private sale, as the board may specify, at such price or prices as the board shall determine, but at not less than ninety-five percent of the principal amount thereof, and at such interest rate as the board shall determine, notwithstanding the provisions of section 108.170, RSMo.

2. The board may issue notes payable from the proceeds of bonds to be issued in the future or from such other sources as the board may specify as in the case of bonds. Such notes shall mature in not more than five years and shall be sold at public or private sale, as the board may specify, at not less than ninety-five percent of the principal amount thereof and at such interest rate as the board shall determine, notwithstanding the provisions of section 108.170, RSMo. The other details with respect to such notes shall be determined by the board as in the case of bonds.

3. The state shall not be liable on any notes or bonds of the board. Such notes or bonds shall not be a debt of the state and shall contain on the faces thereof a statement to such effect.

4. No member of the board nor any person authorized to execute notes or bonds of the board shall be liable personally on such notes or bonds or shall be subject to any personal liability or accountability by reason of the issuance thereof.

5. The notes and bonds of the board are securities in which all public bodies and political subdivisions of this state; all insurance companies and associations and all other persons carrying on an insurance business; all banks, trust companies, saving associations, savings and loan associations, credit unions, and investment companies; all administrators, guardians, executors, trustees, and other fiduciaries; and all other persons who now or may hereafter be authorized to invest in notes and bonds or other obligations of this state may properly and legally invest funds, including capital, in their control or belonging to them.

6. The board shall not be required to pay any taxes or any assessments whatsoever to this state, any political subdivision of this state, or any other governmental agency of this state. The notes and bonds of the board, and the income therefrom, shall, at all times, be exempt from any taxes and any assessments, except for estate taxes, gift taxes, and taxes on transfers.

7. Nothing contained in sections 100.250 to 100.297 shall be deemed to constitute a use of state funds or credit in violation of the provisions of article III, sections 37, 38(a) and 39, of the Missouri Constitution.

8. The board shall have the power to contract with any development agency to perform any governmental service, activity or undertaking which the contracting development agency is authorized by law to perform or to issue any bonds or notes which the contracting development agency is authorized by law to issue. Any such contract shall be authorized by the governing body of the development agency and by the board and shall state the purpose of the contract and the powers and duties of the parties thereunder. Any bonds or notes issued by the board on behalf of a development agency shall be entitled to the same security as if such bonds or notes were issued directly by the development agency. In addition to any other security for such bonds or notes, the board may secure such bonds, notes or other indebtedness, **except for bonds issued to initially provide money for the jobs now fund**, in the manner described in section 100.297.

100.281. 1. A request for a loan from the development and reserve fund, the infrastructure development fund or the export finance fund to fund export trade activities or to carry out a project shall be in the form of an application for the project to the board, which application shall be in such form as the board may specify. After reviewing the application and such other information as the board may require, the board may grant all or a part of the loan request, provided the board determines that:

- (1) The project will be a benefit to the economy or infrastructure of the state;
- (2) The project will generate sufficient revenues or the borrower will otherwise have sufficient revenues available to enable the borrower to repay the loan to the development and reserve fund, the infrastructure development fund or the export finance fund, along with any interest to be charged; and
- (3) In the case of an infrastructure facility project, the loan will not exceed ten million

dollars.

2. [When the board makes a loan under the provisions of sections 100.250 to 100.297, copies of all documents filed in support of the loan application and copies of all agreements, notes, evidence of debts, or security agreements connected with such loan may be forwarded to the department of economic development, and if so forwarded, that department shall thereafter be responsible for the administration of such agreements; but the board shall not transfer or assign any of its interests under any of such agreements to the department of economic development. In the event of a substantial default in the terms of any such agreements, the department of economic development shall notify the board in order that the board may take whatever steps it deems necessary to protect its interests.

3.] Notwithstanding any other provision of law to the contrary, all development agencies, as defined in section 100.255, shall have the power to borrow funds from the board for any project, to contract with the board, and to furnish a security interest in any of their revenues or properties to the board to secure a loan from the board and to issue notes in evidence thereof upon such terms as such development agencies shall determine.

[4.] 3. When the board issues bonds to provide loans for more than one infrastructure project, the board shall make a reasonable effort to sell the bonds to a purchaser that represents a group consisting of more than one underwriter.

100.293. 1. There shall be created a "Jobs Now Recommendation Committee", comprised of representatives of the department of economic development, the department of agriculture, the department of natural resources, and the department of transportation. The committee shall establish application materials and procedures for development agencies to apply to the board for grants or low-interest or interest-free loans for the purpose of funding jobs now projects.

2. Applications shall be submitted simultaneously to the committee and the board. The committee shall review the applications and prepare and submit analyses and recommendations to the board for a determination as to approval or denial of grants or loans from the jobs now fund.

3. After reviewing applications and such other information as the board may require, the board may grant all or a part of a grant or loan request, provided the board determines:

(1) The jobs now project:

- (a) Will not happen without the grant or loan from the board; or**
- (b) Will have a significant local economic impact; or**
- (c) Demonstrates high levels of job creation;**

(2) In the case of a low-interest or interest-free loan, the jobs now project will generate sufficient revenues or the borrower will otherwise have sufficient revenues available to enable the borrower to repay the loan to the jobs now fund,

along with any interest to be charged; and

(3) No loan or grant may exceed five million dollars.

4. Of the total moneys available for grants and loans for jobs now projects, twenty percent shall be set aside for loans and grants that otherwise meet the requirements of subsection 3 of this section, but that also will be used to leverage additional matching federal or non-state funds.

5. Of the total moneys available for grants and loans for jobs now projects, twenty percent shall be set aside for loans and grants that otherwise meet the requirements of subsection 3 of this section, but are for public higher education infrastructure facilities that have a high probability of creating jobs for the future in targeted industries.

6. The set-asides in subsections 4 and 5 of this section shall in no way prohibit such projects to apply for grants or loans from the non set-aside portion of the jobs now fund.

135.155. Notwithstanding any provision of the law to the contrary, no revenue-producing enterprise shall receive the incentives set forth in sections 135.100 through 135.150 for facilities commencing operations on or after January 1, 2005.

135.286. Notwithstanding any provision of the law to the contrary, no revenue-producing enterprise shall receive the state tax exemption, state tax credits, or state tax refund as provided in sections 135.200 to 135.283 for facilities commencing operations on or after January 1, 2005. This provision is not intended to affect in any way the local real property tax abatement authorized by section 135.215.

135.1050. The following terms, whenever used in sections 135.1050 to 135.1075 mean:

(1) "Commencement of commercial operations", shall be deemed to occur during the first taxable year for which the new business facility is first put into use by the taxpayer in the enhanced business enterprise in which the taxpayer intends to use the new business facility;

(2) "Department", the department of economic development;

(3) "Director", the director of the department of economic development;

(4) "Employee", A person employed by the enhanced business enterprise on:

(a) A regular, full-time basis;

(b) A part-time basis, provided such person is customarily performing such duties an average of at least twenty hours per week; or

(c) A seasonal basis, provided such person performs such duties for at least eighty percent of the season customary for the position in which such person is

employed;

(5) "Enhanced business enterprise":

(a) An industry or one of a cluster of industries that is identified by the department as critical to the state's economic security and growth and affirmed by the joint committee; or

(b) An industry that will have an impact on industry cluster development, as identified by the governing authority in its application for designation of an enhanced enterprise zone, approved by the department and affirmed by the joint committee;

(6) "Existing business facility", any facility in this state which was employed by the taxpayer claiming the credit in the operation of an enhanced business enterprise immediately prior to an expansion, acquisition, addition, or replacement;

(7) "Facility", any building used as an enhanced business enterprise located within an enhanced enterprise zone, including the land on which the facility is located and all machinery, equipment, and other real and depreciable tangible personal property acquired for use at and located at or within such facility and used in connection with the operation of such facility;

(8) "Governing authority", the body holding primary legislative authority over a county or incorporated municipality;

(9) "Joint committee", the joint legislative committee on economic development policy and planning as created in section 620.602, RSMo;

(10) "New business facility", a facility which satisfies the following requirements:

(a) Such facility is employed by the taxpayer in the operation of an enhanced business enterprise. Such facility shall not be considered a new business facility in the hands of the taxpayer if the taxpayer's only activity with respect to such facility is to lease it to another person or persons. If the taxpayer employs only a portion of such facility in the operation of an enhanced business enterprise, and leases another portion of such facility to another person or persons or does not otherwise use such other portions in the operation of an enhanced business enterprise, the portion employed by the taxpayer in the operation of an enhanced business enterprise shall be considered a new business facility, if the requirements of paragraphs (b), (c), and (d) of this subdivision are satisfied;

(b) Such facility is acquired by, or leased to, the taxpayer after December 31, 2004. A facility shall be deemed to have been acquired by, or leased to, the taxpayer after December 31, 2004, if the transfer of title to the taxpayer, the transfer of possession pursuant to a binding contract to transfer title to the

taxpayer, or the commencement of the term of the lease to the taxpayer occurs after December 31, 2004;

(c) If such facility was acquired by the taxpayer from another taxpayer and such facility was employed immediately prior to the acquisition by another taxpayer in the operation of an enhanced business enterprise, the operation of the same or a substantially similar enhanced business enterprise is not continued by the taxpayer at such facility; and

(d) Such facility is not a replacement business facility, as defined in subdivision (14) of this section;

(11) "New business facility employee", an employee of the taxpayer in the operation of a new business facility during the taxable year for which the credit allowed by section 135.1070 is claimed, except that truck drivers and rail and barge vehicle operators and other operators of rolling stock for hire shall not constitute new business facility employees.

(12) "New business facility investment", the value of real and depreciable tangible personal property, acquired by the taxpayer as part of the new business facility, which is used by the taxpayer in the operation of the new business facility, during the taxable year for which the credit allowed by 135.1070 is claimed, except that trucks, truck-trailers, truck semitrailers, rail vehicles, barge vehicles, aircraft and other rolling stock for hire, track, switches, barges, bridges, tunnels, and rail yards and spurs shall not constitute new business facility investments. The total value of such property during such taxable year shall be:

(a) Its original cost if owned by the taxpayer; or

(b) Eight times the net annual rental rate, if leased by the taxpayer. The net annual rental rate shall be the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals. The new business facility investment shall be determined by dividing by twelve the sum of the total value of such property on the last business day of each calendar month of the taxable year. If the new business facility is in operation for less than an entire taxable year, the new business facility investment shall be determined by dividing the sum of the total value of such property on the last business day of each full calendar month during the portion of such taxable year during which the new business facility was in operation by the number of full calendar months during such period;

(13) "Related taxpayer":

(a) A corporation, partnership, trust, or association controlled by the taxpayer;

(b) An individual, corporation, partnership, trust, or association in control

of the taxpayer; or

(c) A corporation, partnership, trust, or association controlled by an individual, corporation, partnership, trust, or association in control of the taxpayer. "Control of a corporation" shall mean ownership, directly or indirectly, of stock possessing at least fifty percent of the total combined voting power of all classes of stock entitled to vote, "control of a partnership or association" shall mean ownership of at least fifty percent of the capital or profits interest in such partnership or association, and "control of a trust" shall mean ownership, directly or indirectly, of at least fifty percent of the beneficial interest in the principal or income of such trust; ownership shall be determined as provided in Section 318 of the Internal Revenue Code of 1986, as amended;

(14) "Replacement business facility", a facility otherwise described in subdivision (10) of this section, hereafter referred to in this subdivision as "new facility", which replaces another facility, hereafter referred to in this subdivision as "old facility", located within the state, which the taxpayer or a related taxpayer previously operated but discontinued operating on or before the close of the first taxable year for which the credit allowed by this section is claimed. A new facility shall be deemed to replace an old facility if the following conditions are met:

(a) The old facility was operated by the taxpayer or a related taxpayer during the taxpayer's or related taxpayer's taxable period immediately preceding the taxable year in which commencement of commercial operations occurs at the new facility; and

(b) The old facility was employed by the taxpayer or a related taxpayer in the operation of an enhanced business enterprise and the taxpayer continues the operation of the same or substantially similar enhanced business enterprise at the new facility.

Notwithstanding the preceding provisions of this subdivision, a facility shall not be considered a replacement business facility if the taxpayer's new business facility investment, as computed in subdivision (12) of this section, in the new facility during the tax period for which the credits allowed in 135.1070 are claimed exceed one million dollars and if the total number of employees at the new facility exceeds the total number of employees at the old facility by at least two;

(15) "Same or substantially similar enhanced business enterprise", an enhanced business enterprise in which the nature of the products produced or sold, or activities conducted, are similar in character and use or are produced, sold, performed, or conducted in the same or similar manner as in another enhanced business enterprise.

135.1055. 1. For purposes of sections 135.1050 to 135.1075, an area must meet

all the following criteria in order to qualify as an enhanced enterprise zone:

(1) The area is one of pervasive poverty, unemployment, and general distress;

(2) At least sixty-five percent of the residents living in the area have incomes below eighty percent of the median income of all residents within the state of Missouri according to the last decennial census or other appropriate source as approved by the director;

(3) The resident population of the area must be at least four thousand but not more than seventy-two thousand at the time of designation as an enterprise zone if the area lies within a metropolitan statistical area, as established by the United States Census Bureau, or if the area does not lie within a metropolitan statistical area, the resident population of the area at the time of designation must be at least one thousand but not more than twenty thousand inhabitants. If the population of the jurisdiction of the governing authority does not meet the minimum population requirements set forth in this subdivision, the population of the area must be at least fifty percent of the population of the jurisdiction. However, no enhanced enterprise zone shall be created which consists of the total area within the political boundaries of a county; and

(4) The level of unemployment of persons, according to the most recent data available from the United States Bureau of Census and approved by the director, within the area exceeds one and one-half times the average rate of unemployment for the state of Missouri over the previous twelve months, or the percentage of area residents employed on a full-time basis is less than fifty percent of the statewide percentage of residents employed on a full-time basis.

2. In addition to meeting the requirements of subsection 1 of this section, an area, to qualify as an enhanced enterprise zone, must be demonstrated by the governing authority to have either:

- (1) The potential to create sustainable jobs in a targeted industry; or
- (2) A demonstrated impact on industry cluster development.

135.1060. 1. Any governing authority which desires to have any portion of a city or unincorporated area of a county under its control designated as an enhanced enterprise zone shall hold a public hearing for the purpose of obtaining the opinion and suggestions of those persons who will be affected by such designation. The governing authority shall notify the director of such hearing at least thirty days prior thereto and shall publish notice of such hearing in a newspaper of general circulation in the area to be affected by such designation at least twenty days prior to the date of the hearing but not more than thirty days prior to such hearing. Such notice shall state the time, location, date, and purpose

of the hearing. The director, or the director's designee, shall attend such hearing.

2. After a public hearing is held as required in subsection 1 of this section, the governing authority may file a petition with the department requesting the designation of a specific area as an enhanced enterprise zone. Such petition shall include, in addition to a description of the physical, social, and economic characteristics of the area:

(1) A plan to provide adequate police protection within the area;

(2) A specific and practical process for individual businesses to obtain waivers from burdensome local regulations, ordinances, and orders which serve to discourage economic development within the area to be designated an enhanced enterprise zone, except that such waivers shall not substantially endanger the health or safety of the employees of any such business or the residents of the area;

(3) A description of what other specific actions will be taken to support and encourage private investment within the area;

(4) A plan to ensure that resources are available to assist area residents to participate in increased development through self-help efforts and in ameliorating any negative effects of designation of the area as an enhanced enterprise zone;

(5) A statement describing the projected positive and negative effects of designation of the area as an enhanced enterprise zone;

(6) A specific plan to provide assistance to any person or business dislocated as a result of activities within the enhanced enterprise zone. Such plan shall determine the need of dislocated persons for relocation assistance; provide, prior to displacement, information about the type, location, and price of comparable housing or commercial property; provide information concerning state and federal programs for relocation assistance and provide other advisory services to displaced persons. Public agencies may choose to provide assistance under the Uniform Relocation and Real Property Acquisition Act, 42 U.S.C. section 4601, et seq., to meet the requirements of this subdivision; and

(7) A description or plan that demonstrates the requirements of subsection 2 of section 135.1055.

3. Upon approval of an enhanced enterprise zone designation by the department, the director shall submit such enhanced enterprise zone designation to the joint committee for its approval. An enhanced enterprise zone designation shall be effective upon such approval by the joint committee and shall expire in twenty-five years.

4. The director shall report annually to the joint committee the number and location of all enhanced enterprise zones designated, together with the business activity within each designated enhanced enterprise zone. Each designated

enhanced enterprise zone must report to the director on an annual basis regarding the status of the zone and business activity within the zone.

5. On the fifth anniversary of the designation of each zone, and every five years thereafter, the director shall evaluate the activity which has occurred within the zone during the previous five-year period, including business investments and the creation of new jobs. The director shall present the director's evaluation to the joint committee. If the director finds that the plan outlined in the application for designation was not implemented in good faith, or if such zone no longer qualifies under the original criteria, or if the director finds that the zone is not being effectively promoted or developed, the director may recommend to the committee that the designation of that area as an enhanced enterprise zone be canceled. All agreements negotiated under the benefits of such zone shall remain in effect for the originally agreed upon duration. The committee shall schedule a hearing on such recommendation for not later than sixty days after the recommendation is filed with it. At the hearing, interested parties, including the director, may present witnesses and evidence as to why the enhanced enterprise zone designation for that particular area should be continued or canceled. Within thirty days after the hearing the committee shall determine whether or not the designation should be continued. If it is not continued, the director shall remove the designation from the area and follow the procedures outlined in this section.

6. If an area has requested a designated enhanced enterprise zone and met all existing statutory requirements, but has not been designated such, then the applicant may appeal to the joint committee for a hearing to determine its eligibility for such a designation. The review of the director's evaluation and the hearing thereon, and any appeal as provided for in this subsection, by the joint committee shall be an additional duty for that body.

135.1065. 1. Improvements made to "real property" as such term is defined in section 137.010, RSMo, which are made in an enhanced enterprise zone subsequent to the date such zone or expansion thereto was designated, may, upon approval of an authorizing resolution by the governing authority having jurisdiction of the area in which the improvements are made, be exempt, in whole or in part, from assessment and payment of ad valorem taxes of one or more affected political subdivisions.

2. Such authorizing resolution shall specify the percent of the exemption to be granted, the duration of the exemption to be granted, and the political subdivisions to which such exemption is to apply and any other terms, conditions, or stipulations otherwise required. A copy of the resolution shall be provided to the director within thirty calendar days following adoption of the resolution by the

governing authority.

3. No exemption shall be granted until the governing authority holds a public hearing for the purpose of obtaining the opinions and suggestions of residents of political subdivisions to be affected by the exemption from property taxes. The governing authority shall send, by certified mail, a notice of such hearing to each political subdivision in the area to be affected and shall publish notice of such hearing in a newspaper of general circulation in the area to be affected by the exemption at least twenty days prior to the hearing but not more than thirty days prior to the hearing. Such notice shall state the time, location, date, and purpose of the hearing.

4. Notwithstanding subsection 1 of this section, at least one-half of the ad valorem taxes otherwise imposed on subsequent improvements to real property located in an enhanced enterprise zone shall become and remain exempt from assessment and payment of ad valorem taxes of any political subdivision of this state or municipality thereof for a period of not less than ten years following the date such improvements were assessed, provided the improved properties are used for enhanced business enterprises.

5. No exemption shall be granted for a period more than twenty-five years following the date on which the original enhanced enterprise zone was designated by the department and approved by the joint committee.

6. The provisions of subsection 1 of this section shall not apply to improvements made to real property which have been started prior to August 28, 2004.

7. The abatement referred to in this section shall not relieve the assessor or other responsible official from ascertaining the amount of the equalized assessed value of all taxable property annually as required by sections 99.855, 99.957, or 99.1042, RSMo, and shall not have the effect of reducing the payments in lieu of taxes referred to in subdivision (2) of subsection 1 of section 99.845, RSMo, subdivision (2) of subsection 3 of section 99.957, RSMo, or subdivision (2) of subsection 3 of section 99.1042, RSMo, unless such reduction is set forth in the plan approved by the governing body of the municipality pursuant to subdivision (1) of section 99.820, section 99.942, or section 99.1027, RSMo.

135.1070. 1. A taxpayer who establishes a new business facility may, upon approval by the department, be allowed a credit, each tax year for up to ten tax years, in an amount determined as set forth in this section, against the tax imposed by chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.265, RSMo. No taxpayer shall receive multiple ten-year periods for subsequent expansions at the same facility.

2. Notwithstanding any provision of law to the contrary, any taxpayer who establishes a new business facility in an enhanced enterprise zone and is awarded state tax credits under this section may not also receive tax credits under sections 135.100 to 135.150, sections 135.200 to 135.268, or section 135.535.

3. No credit shall be issued pursuant to this section unless:

(1) The number of new business facility employees engaged or maintained in employment at the new business facility for the taxable year for which the credit is claimed equals or exceeds two; and

(2) The new business facility investment for the taxable year for which the credit is claimed equals or exceeds one hundred thousand dollars.

4. The annual amount of credits allowed for an approved enhanced business enterprise shall be the lesser of:

(1) The annual amount authorized by the department for the enhanced business enterprise, which shall be limited to the projected state economic benefit, as determined by the department; or

(2) The sum calculated based upon the following:

(a) A credit of four hundred dollars for each new business facility employee employed within an enhanced enterprise zone;

(b) An additional credit of four hundred dollars for each new business facility employee who is a resident of an enhanced enterprise zone;

(c) An additional credit of four hundred dollars for each new business facility employee who is paid by the enhanced business enterprise a wage that exceeds the average wage paid within the county in which the facility is located, as determined by the department; and

(d) A credit equal to two percent of new business facility investment within an enhanced enterprise zone.

5. In no event shall the department authorize more than seven million dollars annually to be issued for all enhanced business enterprises.

6. If a facility, which does not constitute a new business facility, is expanded by the taxpayer, the expansion shall be considered eligible for the credit allowed by this section if:

(1) The taxpayer's new business facility investment in the expansion during the tax period in which the credits allowed in this section are claimed exceeds one hundred thousand dollars and if the number of new business facility employees engaged or maintained in employment at the expansion facility for the taxable year for which credit is claimed equals or exceeds two, and the total number of employees at the facility after the expansion is at least two greater than the total number of employees before the expansion; and

(2) The taxpayer's investment in the expansion and in the original facility prior to expansion shall be determined in the manner provided in subdivision (12) of section 135.1050.

7. The number of new business facility employees during any taxable year shall be determined by dividing by twelve the sum of the number of individuals employed on the last business day of each month of such taxable year. If the new business facility is in operation for less than the entire taxable year, the number of new business facility employees shall be determined by dividing the sum of the number of individuals employed on the last business day of each full calendar month during the portion of such taxable year during which the new business facility was in operation by the number of full calendar months during such period. For the purpose of computing the credit allowed by this section in the case of a facility which qualifies as a new business facility pursuant to subsection 6 of this section, and in the case of a new business facility which satisfies the requirements of paragraph (c) of subdivision (10) of section 135.1050, or subdivision (14) of section 135.1050, the number of new business facility employees at such facility shall be reduced by the average number of individuals employed, computed as provided in this subsection, at the facility during the taxable year immediately preceding the taxable year in which such expansion, acquisition, or replacement occurred and shall further be reduced by the number of individuals employed by the taxpayer or related taxpayer that was subsequently transferred to the new business facility from another Missouri facility and for which credits authorized in this section are not being earned, whether such credits are earned because of an expansion, acquisition, relocation, or the establishment of a new facility.

8. In the case where a new business facility employee is a resident of an enhanced enterprise zone for less than a twelve-month period is employed for less than a twelve-month period, the credits allowed by paragraph (b) of subdivision (2) of subsection 4 of this section shall be determined by multiplying four hundred dollars by a fraction, the numerator of which is the number of calendar days during the taxpayer's tax year for which such credits are claimed, in which the employee was a resident of an enhanced enterprise zone, and the denominator of which is three hundred and sixty-five.

9. For the purpose of computing the credit allowed by this section in the case of a facility which qualifies as a new business facility pursuant to subsection 6 of this section, and in the case of a new business facility which satisfies the requirements of paragraph (c) of subdivision (10) of section 135.1050 or subdivision (14) of section 135.1050, the amount of the taxpayer's new business facility

investment in such facility shall be reduced by the average amount, computed as provided in subdivision (12) of section 135.1050 for new business facility investment, of the investment of the taxpayer, or related taxpayer immediately preceding such expansion or replacement or at the time of acquisition. Furthermore, the amount of the taxpayer's new business facility investment shall also be reduced by the amount of investment employed by the taxpayer or related taxpayer which was subsequently transferred to the new business facility from another Missouri facility and for which credits authorized in this section are not being earned, whether such credits are earned because of an expansion, acquisition, relocation, or the establishment of a new facility.

10. For a taxpayer with flow-through tax treatment to its members, partners, or shareholders, the credit shall be allowed to members, partners, or shareholders in proportion to their share of ownership on the last day of the taxpayer's tax period.

11. Credits may not be carried forward but shall be claimed for the taxable year during which commencement of commercial operations occurs at such new business facility, and for each of the nine succeeding taxable years for which the credit is issued.

12. Certificates of tax credit authorized by this section may be transferred, sold, or assigned by filing a notarized endorsement thereof with the department that names the transferee, the amount of tax credit transferred, and the value received for the credit, as well as any other information reasonably requested by the department. The sale price cannot be less than seventy-five percent of the par value of such credits.

13. The director of revenue shall issue a refund to the taxpayer to the extent that the amount of credits allowed in this section exceeds the amount of the taxpayer's income tax.

135.1075. The department may adopt such rules, statements of policy, procedures, forms, and guidelines as may be necessary to carry out the provisions of sections 135.1050 to 135.1075. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2004, shall be invalid and void.

[135.545. A taxpayer shall be allowed a credit for taxes paid pursuant to chapter 143, 147 or 148, RSMo, in an amount equal to fifty percent of a qualified investment in transportation development for aviation, mass transportation, including parking facilities for users of mass transportation, railroads, ports, including parking facilities and limited access roads within ports, waterborne transportation, bicycle and pedestrian paths, or rolling stock located in a distressed community as defined in section 135.530, and which are part of a development plan approved by the appropriate local agency. If the department of economic development determines the investment has been so approved, the department shall grant the tax credit in order of date received. A taxpayer may carry forward any unused tax credit for up to ten years and may carry it back for the previous three years until such credit has been fully claimed. Certificates of tax credit issued in accordance with this section may be transferred, sold or assigned by notarized endorsement which names the transferee. The tax credits allowed pursuant to this section shall be for an amount of no more than ten million dollars for each year. This credit shall apply to returns filed for all taxable years beginning on or after January 1, 1999. Any unused portion of the tax credit authorized pursuant to this section shall be available for use in the future by those entities until fully claimed.]

[620.1039. 1. As used in this section, the term "taxpayer" means an individual, a partnership, or a corporation as described in section 143.441 or 143.471, RSMo, or section 148.370, RSMo, and the term "qualified research expenses" has the same meaning as prescribed in 26 U.S.C. 41.

2. For tax years beginning on or after January 1, 2001, the director of the department of economic development may authorize a taxpayer to receive a tax credit against the tax otherwise due pursuant to chapter 143, RSMo, or chapter 148, RSMo, other than the taxes withheld pursuant to sections 143.191 to 143.265, RSMo, in an amount up to six and one-half percent of the excess of the taxpayer's qualified research expenses, as certified by the director of the department of economic development, within this state during the taxable year over the average of the taxpayer's qualified research expenses within this state over the immediately preceding three taxable years; except that, no tax credit shall be allowed on that portion of the taxpayer's qualified research expenses incurred within this state during the taxable year in which the credit is being claimed, to the extent such expenses exceed two hundred percent of the taxpayer's average qualified research expenses incurred during the immediately preceding three taxable years.

3. The director of economic development shall prescribe the manner in which the tax credit may be applied for. The tax credit authorized by this section may be claimed by the taxpayer to offset the tax liability imposed by chapter 143, RSMo, or

chapter 148, RSMo, that becomes due in the tax year during which such qualified research expenses were incurred. Where the amount of the credit exceeds the tax liability, the difference between the credit and the tax liability may only be carried forward for the next five succeeding taxable years or until the full credit has been claimed, whichever first occurs. The application for tax credits authorized by the director pursuant to subsection 2 of this section shall be made no later than the end of the taxpayer's tax period immediately following the tax period for which the credits are being claimed.

4. Certificates of tax credit issued pursuant to this section may be transferred, sold or assigned by filing a notarized endorsement thereof with the department which names the transferee and the amount of tax credit transferred. The director of economic development may allow a taxpayer to transfer, sell or assign up to forty percent of the amount of the certificates of tax credit issued to and not claimed by such taxpayer pursuant to this section during any tax year commencing on or after January 1, 1996, and ending not later than December 31, 1999. Such taxpayer shall file, by December 31, 2001, an application with the department which names the transferee, the amount of tax credit desired to be transferred, and a certification that the funds received by the applicant as a result of the transfer, sale or assignment of the tax credit shall be expended within three years at the state university for the sole purpose of conducting research activities agreed upon by the department, the taxpayer and the state university. Failure to expend such funds in the manner prescribed pursuant to this section shall cause the applicant to be subject to the provisions of section 620.017.

5. No rule or portion of a rule promulgated under the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo. All rulemaking authority delegated prior to June 27, 1997, is of no force and effect and repealed; however, nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or adopted prior to June 27, 1997, if such rule complied with the provisions of chapter 536, RSMo. The provisions of this section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, including the ability to review, to delay the effective date, or to disapprove and annul a rule or portion of a rule, are subsequently held unconstitutional, then the purported grant of rulemaking authority and any rule so proposed and contained in the order of rulemaking shall be invalid and void.

6. The aggregate of all tax credits authorized pursuant to this section shall not exceed nine million seven hundred thousand dollars in any year.]

T

Unofficial

Bill

Copy